IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

WP(C).No. 29121 of 2005(P)

AGAINST THE ORDER DATED 26/09/2003 IN IA.1787/2003 IN OPMV.21/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA

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PETITIONER:

RAJU THOMAS, AGED 54 YEARS,
S/O.THOMAS, PEEDIKAPARAMBIL HOUSE,
KAIPUZHA, NEENDOOR, KOTTAYAM.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS:

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1. THE ORIENTAL INSURANCE CO. LTD.,
BRANCH OFFICE, KANJIKUZHY, KOTTAYAM,
REPRESENTED BY BRANCH MANAGER.

2. SANTHOSH KUMAR, S/O.JOHN,
PATTEERIL HOUSE, MUTTAPPALLY,
MUKKOOTTUTHARA P.O., KOTTAYAM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 29121 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF COMMON AWARD IN OP(MV) NO.21/96,22/96 AND 2565/95 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAI DATED 19.07.2003.

EXT.P2 : TRUE COPY OF AFFIDAVIT AND THE PETITION UNDER ORDER 47 FILED IN OP(MV) NO.21/96 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAI.

EXT.P3 : TRUE COPY OF THE ORDER IN IA NO.1787/2003 IN OP(MV) NO.21/96 DATED 26.09.2003.

EXT.P4 : TRUE COPY OF THE EXECUTION PETITION FILED IN OP(MV) NO.21/96.

EXT.P5 : TRUE COPY OF THE EXECUTION PETITION FILED IN OP(MV) NO.22/96.

EXT.P6 : TRUE COPY OF THE EXECUTION PETITION FILED IN OP(MV) NO.2565/95.

/TRUE COPY/

PA TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 29121 OF 2005

Dated this the 23rd day of August, 2007

JUDGMENT

The 1st respondent in OP(MV) Nos.21 of 1996, 22 of 1996 and 2565 of 1995 on the files of the Motor Accidents Claims Tribunal, Palai is the petitioner in this Writ Petition under Article 227. The 1st respondent herein is the Insurance Company and the 2nd respondent is the claimant. Before the MACT the petitioner was arrayed as the 1st respondent on the allegation that he is the owner of the offending autorikshow, having registration No. KL-5/A-7614. Ext.P1 common judgment was passed by the Tribunal in the Original Petitions wherein the petitioner as well as the driver of the vehicle remained ex-parte. Under Ext.P1, the 1st respondent Insurance Company was directed to deposit the compensation amount and no liability is cast on either the petitioner or the driver of the vehicle to pay compensation to the claimants. The petitioner submits that subsequent to Ext.P1, on behalf of the Insurance Company, an application under Order 47 was filed before the MACT seeking review of Ext.P1. It was contended in the review application that the driver (the 2nd respondent herein) was not holding a valid badge at the time of the accident and on that reason sought permission for recovering the amount from the petitioner. The

Tribunal passed Ext.P3 order allowing the review application. It is urged that Ext.P3 order was passed by the Tribunal without notice to the petitioner and without hearing the petitioner and hence violative of the principles of natural justice. Ext.P3 order was passed in OP(MV) No.21 of 1996. Similar orders were passed in OP Nos.2596 of 1995 and 22 of 1996 also. On the strength of Ext.P3 and similar orders, Exts.P4 to P6 execution petitions were filed by the Insurance Company.

2. The grievance of the petitioner is that, in spite of his objections, the Tribunal ordered issuance of recovery certificate for realisation of the amount claimed in Exts.P4 to P6 from the petitioner. Hence the Writ Petition with the following prayers:

> i. Call for the records relating to Ext.P3 and similar orders passed in OP(MV) Nos.22/96 and 2565/95 of the Motor Accident Claims Tribunal, Palai and set aside the same;
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> ii. Stay all further revenue recovery steps ordered by the Motor Accident Claims Tribunal, Palai in pursuance to Exts.P4 to P6 execution petitions in OP(MV) Nos.21/96, 22/96 and 2565/95 of the Motor Accident Claims Tribunal, Palai.

3. I have heard the submissions of Mr.M.J.Thomas, learned counsel for the petitioner. It is seen that no counter affidavit has been filed by the 1st respondent Insurance Company. The allegation of the petitioner is that it was without notice to him that Ext.P3 and similar

orders were passed by the Tribunal stands established. I am of the view that on that ground Ext.P3 and similar orders passed in OP Nos.22/96 and 2596/95 by the MACT, Palai are liable to be set aside. I set aside Ext.P3 as well as similar orders passed in the review applications in OP (MV) Nos.22/96 and 2596/95 by the MACT, Palai and direct the MACT, Palai to take fresh decision on the three review petitions with notice to the petitioner, the Insurance Company and all others concerned. The petitioner is permitted to urge all available grounds including the ground that lack of power for the MACT to review its own judgment by placing reliance on the judgment in **Cherushpam Hospital Trust v. Palai Municipality** [2005(2) KLT 234] and any other authorities, if any. Fresh decision as directed above will be taken by the MACT at the earliest and at any rate within two months of receiving copy of this judgment.

PIUS C. KURIAKOSE, JUDGE

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